

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Arthur Albano	Team: Squad #4	CCRB Case #: 201506807	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/11/2015 5:36 PM	Location of Incident: Lockman Avenue and Brabrank Street	Precinct: 121	18 Mo. SOL 2/11/2017	EO SOL 2/11/2017	
Date/Time CV Reported Fri, 08/14/2015 11:30 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/14/2015 11:30 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Mathew Reich	00122	933211	NARCBSI

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Vincent Agostino	25992	945355	NARCBSI

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Mathew Reich	Abuse: Det. Mathew Reich stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.DT3 Mathew Reich	Discourtesy: Det. Mathew Reich spoke discourteously to § 87(2)(b)	
C.DT3 Mathew Reich	Abuse: Det. Mathew Reich searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	

### Case Summary

On August 11, 2015 at approximately 5:30 p.m., § 87(2)(b) was driving her mother's 2012 Honda Civic. § 87(2)(b) parked in front of a deli at 281 South Avenue, and § 87(2)(b) exited the vehicle and entered the deli to use the ATM. § 87(2)(b) was inside the deli for less than two minutes, exited, and entered the passenger's side seat. § 87(2)(b) made an illegal U-turn on South Avenue and then turned left on Brabant Avenue.

When she reached Brabant Street and Lockman Avenue an unmarked Kia sedan flashed its lights and sounded its sirens causing § 87(2)(b) to pull over (**Allegation A**).

Two plainclothes officers, determined by investigation to be Det. § 87(2)(b) Reich and PO Vincent Agostino of Narcotics Borough Staten Island, exited the vehicle and approached § 87(2)(b)'s vehicle. Det. Reich approached § 87(2)(b)'s side, the driver's side, and PO Agostino approached § 87(2)(b)'s side, the passenger side. According to § 87(2)(b) Det. Reich asked § 87(2)(b) to step out of her vehicle. While she was stepping out, Det. Reich allegedly stated, "You better not fucking run." (**Allegation B**).

Once outside the vehicle, § 87(2)(b) stated that she had Suboxone, a controlled substance, on her. As a result, both § 87(2)(b) and § 87(2)(b) were placed under arrest. Det. Reich then allegedly searched § 87(2)(b)'s vehicle (**Allegation C**).

§ 87(2)(b)

### Video Footage

TARU footage for this incident was requested on August 18, 2015. On September 3, 2015, a CD was sent to the CCRB from TARU, however it contained footage for the incorrect date (August 12, 2015). The investigator attempted to call TARU to rectify the issue, however the footage could not be obtained in time, as it was, at that time, three weeks after the incident date.

### Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b)'s arrest.

• § 87(2)(b)

• § 87(2)(b)

• § 87(2)(b)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by or involving § 87(2)(b) or § 87(2)(b)
- Det. Reich has been a member of the service for 12 years, he has 26 other complaints filed against him containing a total of 78 allegations. The CCRB has substantiated six allegations against Det. Reich: in CCRB case #200503310 a stop and refusal to provide name and shield number was substantiated. The CCRB recommended Charges, and Det. Reich was ultimately penalized with instructions. § 87(2)(g), § 87(4-b)

§ 87(2)(g),  
§ 87(4-b)

In CCRB case #201409178 a physical force allegation was substantiated. The CCRB recommended charges, and no NYPD disposition or penalty noted. In CCRB case #201410419 a vehicle stop was substantiated. The CCRB recommended charges and no NYPD disposition or Penalty was noted. In CCRB case #201501303 a refusal to obtain medical treatment allegation was substantiated. The CCRB recommended Command Discipline A, and no NYPD disposition or penalty was noted.

- PO Agostino has been a member of the service for 7 years and there are no substantiated allegations against him. There is no pattern in the complaints filed against him relative to this case.

### Potential Issues

Multiple attempts were made to have § 87(2)(b) provide a sworn statement in regards to this case. A total of eight calls and two letters were sent to § 87(2)(b) between August 27, 2015 and October 8, 2015. § 87(2)(b) missed two appointments to provide a sworn statement without prior notice during that time. Therefore, § 87(2)(b) was not interviewed in regards to this complaint.

On August 18, 2015, a request was made to Narcotics Borough Staten Island for supporting depositions and additional arrest paperwork in regards to this arrest. Several follow-up calls were made to IAB in regards to the documents, however as of the date of this report, the document request remains outstanding.

### Findings and Recommendations

#### Explanation of Subject Officer Identification

- Det. Reich admitted to observing a VTL violation and deciding to stop § 87(2)(b)'s vehicle. Therefore, **Allegation A** will be pleaded against Det. Reich. § 87(2)(b) stated that the officer that interacted with her on the driver's side of the vehicle stated "You better not fucking run," as she was stepping out of the vehicle. Det. Reich stated that he approached the driver's side and spoke to § 87(2)(b) on the driver's side of the vehicle during the vehicle stop and subsequent arrest. Therefore, **Allegation B** will be pleaded against Det. Reich. Both officers partook in the search of § 87(2)(b)'s vehicle, therefore **Allegation C** and **D** will be pleaded against Det. Reich and PO Agostino.

#### Allegations not pleaded

- **Abuse of Authority- Search:** The investigation determined that § 87(2)(b) and § 87(2)(b) were under arrest prior to being searched. Therefore a search (of person) allegation will not be pleaded against Det. Reich or PO Agostino.

#### Allegation A –Abuse of Authority: Det. § 87(2)(b) Reich stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

According to § 87(2)(b) (Board Review 02), Det. Reich stated that he pulled over her vehicle because she was "making too many U-turns." Prior to the stop, § 87(2)(b) stated that she made one U-turn on South Avenue, in front of a Deli at the corner of South Avenue and Brabant Street, which was the first time she noticed Det. Reich's vehicle.

A photograph of South Avenue and the Deli shows that in order to make a U-turn, § 87(2)(b) would have to cross over a double yellow line (Board Review 03).

Neither Det. Reich, nor PO Agostino could recall the specific violation that they pulled over § 87(2)(b)'s vehicle for (Board Review 04 and 05). However, both stated that the

information is noted on the supporting deposition related to this arrest. As stated in the Potential Issues section the arrest documentation, including the supporting deposition, are still pending with Narcotics Staten Island.

U-turns shall be made at intersections from and to that portion of the highway nearest the marked center line.

§ 87(2)(b), § 87(2)(g)

**Allegation B- Discourtesy- Det. § 87(2)(b) Reich spoke discourteously to § 87(2)(b)**

§ 87(2)(b) alleged that as she was stepping out of her vehicle, Det. Reich stated, “You better not fucking run.” Det. Reich denied making this statement, telling § 87(2)(b) not to run, or using any profanity throughout this incident. PO Agostino also denied hearing Det. Reich use profanity or hearing him make the statement, or anything similar to it. § 87(2)(b) did not cooperate with the investigation.

Det. Reich (Board Review 04) and PO Agostino (Board Review 05) were both consistent with the fact that § 87(2)(b) and § 87(2)(b) were calm and cooperative throughout the vehicle stop and subsequent arrest, and stated that they had no fear or suspicion that they would attempt to flee.

§ 87(2)(g)

**Allegation C- Abuse of Authority- Det. Reich searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

It is undisputed that officers arrested § 87(2)(b) for possession of Suboxone, a controlled substance and then searched her vehicle. It is undisputed that additional packages of Suboxone were discovered in the vehicle during the search. § 87(2)(b), § 87(2)(g)

According to Det. Reich (Board Review 04) and PO Agostino (Board Review 05), upon approaching the vehicle, Det. Reich observed a package of Suboxone, clearly and distinctly labeled as Suboxone in a plastic wrapper (not the original carton container) in the center console of the vehicle. It was at that point that both occupants were under arrest and asked to step out of the vehicle. According to § 87(2)(b) (Board Review 03), the Suboxone in her vehicle was not visible from the outside of the vehicle, and upon stepping out of the vehicle, she admitted to Det. Reich that she had Suboxone on her person and left her prescription at home. It was at that point that she was placed under arrest, and the vehicle was then searched.

During a lawful stop, the request for the driver to step out of their car is a *de minimis* intrusion that does not require an individualized suspicion. Pennsylvania v. Mimms 434 U.S. 106 (1977). This request also extends to passengers of the vehicle as well. Maryland v. Wilson 519 U.S. 408 (1997). (Board Review 06)

Only the person for whom the substance was prescribed is permitted to possess a controlled substance and the substance must remain in the original container in which it was dispensed. NY CLS Pub Health § 3345 (See also; People v. Felden 2015 N.Y. Misc. LEXIS 2549 (New York Ct. 2015) and Deandra v. Hicks 2015 U.S. Dist. Lexis 133765 (N.Y. Southern Dist. 2015)) (Board Review 07).

The presence of a controlled substance in an automobile, other than a public omnibus, is presumptive evidence of knowing possession thereof by each and every person in the automobile at the time such controlled substance was found; except that such presumption does not apply to any person in the automobile if one of them, having obtained the controlled substance and not being under duress, is authorized to possess it and such controlled substance is in the same container as when he received possession thereof. NY CLS Penal § 220.25 (Board Review 07)

A vehicle may be searched without a warrant if officers have probable cause to believe that the vehicle contains contraband, evidence of a crime, a weapon or some means of escape. People v. Smith, A.D. Slip Op 5934 (2<sup>nd</sup> Dep't 2012). (Board Review 06)

§ 87(2)(b), § 87(2)(g)

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Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date